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Ira Daves

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

IRA DAVES, an individual, Plaintiff, vs. ERIC H. HOLDER, Attorney General of the United States, Defendants	Case No.: CV-08-07376 CAS (AGRx) **DECLARATION OF MICHAEL L. COHEN IN SUPPORT OF DAVES' OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER ON REQUESTS FOR ADMISSIONS**

1. My name is Michael L. Cohen. I am over 21 years of age. I am of sound mind. I have personal knowledge of the facts stated in this declaration, and the facts stated here are true and correct. If I were called to testify, I could and would testify as follows:

2. I am a member of the State Bar of California. I am also admitted to practice before this Court.

3. Our firm—Cohen McKeon LLP—represents Mr. Daves in his lawsuit against the Attorney General of the United States. I am lead trial counsel for Mr. Daves.

4. Attached as Exhibit 1 to my declaration is a true and correct copy of a letter, dated December 2, 2010, that I wrote to Ms. Cindy Cipriani.

5. Attached as Exhibit 2 to my declaration is a true and correct copy of a letter, dated December 17, 2010, that I wrote to Mr. Eugene Long.

6. I did not "rebuff" the efforts of opposing counsel to resolve this matter informally, as the Attorney General writes. On the contrary, as my letters show, we tried in good faith to resolve this matter without the necessity of intervention by the Court.

Declarant says nothing further at this time.

Signed under penalty of perjury on January 10th, 2011, in Los Angeles, California.

Michael L. Cohen

EXHIBIT 1

COHEN McKEON LLP
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December 2, 2010

Via Facsimile (619) 557-5004

Ms. Cindy Cipriani
AUSA, Deputy Chief of the Civil Division
Southern District of California
880 Front Street
Room 6293
San Diego, CA 92101

Re: Complaint of Discrimination by AUSA Ira Daves
Central District of California
Agency No. USA-2008-00171
Civil Case No. CV-08-07376 CAS AGRx

Dear Cindy:

I'm replying to your November 30th letter.

1. I'll review your proposed non-disclosure agreement and contact you regarding any changes we think are necessary or appropriate.

2. I disagree with you about the request for admissions. Mr. Daves has worked in the office for 15 years. There's a lot of ground to cover. We tried to cover some of that ground with the complaint, but the government objected that the complaint was too long and that it would take too much time and too much effort to write "admitted" or "denied" for each of the allegations. So that leaves discovery. But the Federal Rules restrict the number of interrogatories we may serve, the number of depositions we may take, and the amount of time we may depose any witness. Moreover, depositions are expensive. They're not a cost-efficient method for putting basic facts in admissible form. That leaves requests for admissions, and we're using them just as the rules intended—to determine which facts are disputed and which are not, thus narrowing the issues for trial.

Please see the Comments to the 1970 Amendments regarding requests for admissions ("Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating those that can be.")

That said, I think the government should be willing to stipulate to most of the facts set forth in Mr. Daves' request for admissions. If you'd like to walk through the RFAs with us to discuss which requested admissions can be the subject of a stipulation, we'll be happy to try that. Please let me know.

3. We are willing to depose Mr. Sullivan in January. Will you accept service of a subpoena? Or will a notice served on you be sufficient? Please advise.

4. I disagree with you regarding mediation. Even through the case did not settle, I thought the mediation was productive. Furthermore, Mr. Daves remains willing to mediate. And he is not unwilling to share costs, as you wrote. Rather, he cannot afford to.

I look forward to hearing from you.

Very truly yours,

Michael L. Cohen,
Counsel for Mr. Daves

Cc: Heather M. McKeon

EXHIBIT 2

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December 17, 2010

Via Facsimile (619) 557-5004
And Email

Mr. Eugene R. Long, Jr.
Assistant United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101

Re: Complaint of Discrimination by AUSA Ira Daves
Central District of California
Agency No. USA-2008-00171
Civil Case No. CV-08-07376 CAS AGRx

Dear Mr. Long:

I'm replying to your December 13th letter, which I received on December 14th. We discussed the substance of your letter yesterday, during our December 16th phone call. During our discussion, I explained to you—as I had to Ms. Cipriani, both person-to-person and in writing—why neither depositions nor interrogatories are an adequate substitute for requests for admission to establish that certain basic facts are undisputed. I won't bore you by repeating my explanation here.

Nevertheless, hope springs eternal. In that hopeful spirit, I hereby reiterate our offer to go through each of our requests to determine which of them the Government would be willing to stipulate to. Since we are obligated later in the process to determine which facts are undisputed and to which the parties can stipulate, we are simply doing now what we otherwise must do later. There's no good reason to wait.

Perhaps this letter will change your mind. I hope it does.

Very truly yours,

COHEN McKEON LLP

By:____________________

Michael L. Cohen,
Counsel for Mr. Daves

Cc: Heather M. McKeon (*via scan and email*)
Cindy Cipriani (*via scan and email*)